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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SAUL B.,

9 Plaintiff,

Case No. C18-531-MLP

10 v.

ORDER

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13 **I. INTRODUCTION**

14 Plaintiff seeks review of the denial of his application for Supplemental Security Income.
15 Plaintiff contends the administrative law judge (“ALJ”) erred by finding at step three that he did
16 not meet any listed impairment, and by discounting his own testimony as well as the opinions of
17 treating providers. (Dkt. #10 at 1-2.) As discussed below, the Court AFFIRMS the
18 Commissioner’s final decision and DISMISSES the case with prejudice.

19 **II. BACKGROUND**

20 Plaintiff was born in 1966, has a high school diploma and some college education, and
21 has worked as a construction laborer, dishwasher, electrical apprentice, and housekeeper. AR at
22 332, 350. Plaintiff was last gainfully employed in June 2014. *Id.*

23 On May 31, 2016, Plaintiff applied for benefits, alleging disability as of January 1, 2010.

1 AR at 165, 295-310. Plaintiff's applications were denied initially and on reconsideration, and
2 Plaintiff requested a hearing. AR at 196-204, 208-17. After the ALJ conducted hearings in
3 November 2017 (AR at 97-140), the ALJ issued a decision finding Plaintiff not disabled. AR at
4 15-25.

5 Utilizing the five-step disability evaluation process,¹ the ALJ found:

6 Step one: Plaintiff has not engaged in substantial gainful activity since May 31, 2016.

7 Step two: Plaintiff's affective-related disorders, trauma- and stress-related disorders, and
8 anxiety disorders are severe impairments. Since October 19, 2016, Plaintiff's status-post
chest/abdominal trauma is an additional severe impairment.

9 Step three: These impairments do not meet or equal the requirements of a listed
10 impairment.²

11 Residual Functional Capacity: Plaintiff can perform work at all exertional levels with
12 additional limitations: he can remember, understand, and carry out instructions for tasks
13 generally required by occupations with a specific vocational preparation of 1-2. He can
14 have occasional superficial interaction with the general public, and occasional interaction
with co-workers or supervisors. His job tasks should be able to be completed without the
assistance of others but occasional assistance could be tolerated. Job tasks should not
require extended conversations with co-workers or supervisors.

15 Since October 19, 2016, Plaintiff has had additional limitations: he can perform light
16 work, and can stand/walk in two-hour intervals for eight hours per day and sit without
17 restriction. He can occasionally climb, balance, stoop, kneel, crouch, and crawl. He can
18 have occasional exposure to extreme heat, extreme cold, wetness, vibrations, or
atmospheric conditions. He can tolerate a noise level of 3 or less, as defined in the
Dictionary of Occupational Titles. He cannot work at exposed heights or operate heavy
equipment, but can otherwise have occasional exposure to hazards.

19 Steps four and five: Plaintiff could perform past relevant work as a kitchen helper before
20 October 19, 2016, and since that time there are other jobs that exist in significant
numbers in the national economy that Plaintiff can perform. Therefore, Plaintiff is not
disabled.

21 AR at 15-25.

23 ¹ 20 C.F.R. § 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
2 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the
3 Commissioner to this Court.

4 **III. LEGAL STANDARDS**

5 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
6 security benefits when the ALJ's findings are based on legal error or not supported by substantial
7 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As
8 a general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
9 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
10 (cited sources omitted). The Court looks to "the record as a whole to determine whether the
11 error alters the outcome of the case." *Id.*

12 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
13 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
14 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
15 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
16 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
17 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
18 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas*
19 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than
20 one rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

21 **IV. DISCUSSION**

22 **A. The ALJ Did Not Err at Step Three**

23 Plaintiff argues that the ALJ erred in finding that he did not meet any of the mental

1 disorders listings at step three. To satisfy the relevant listings, Plaintiff's mental impairments
2 must cause one "extreme" or two "marked" limitations in the "paragraph B" criteria. *See* 20
3 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00(A)(2)(b). The ALJ found that Plaintiff's limitations
4 were either mild or moderate, and thus Plaintiff did not satisfy the "paragraph B" criteria. AR at
5 18-19.

6 Plaintiff points to evidence that he contends shows that his limitations should have been
7 found more severe than "mild" or "moderate." (Dkt. #10 at 16-18.) The ALJ cited substantial
8 evidence to support his conclusions, and the Court declines to reweigh the evidence in the
9 manner requested by Plaintiff. Plaintiff has not established that the ALJ's interpretation of the
10 record is not supported by substantial evidence, or is unreasonable, and therefore has failed to
11 establish a step-three error. *See Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997)
12 ("[T]he key question is not whether there is substantial evidence that could support a finding of
13 disability, but whether there is substantial evidence to support the Commissioner's actual finding
14 that the claimant is not disabled.").

15 **B. The ALJ Did Not Err in Assessing Medical Opinions or Plaintiff's Testimony**

16 The ALJ gave little weight to opinions written by Plaintiff's treating psychologist, Paula
17 Sigafus, Ph.D., and treating psychiatrist, Carolyn Brenner, M.D., finding the opinions
18 inconsistent with Plaintiff's treatment record and activities. AR at 22.³ The ALJ cited these
19 same reasons for discounting Plaintiff's testimony. AR at 20-21. The ALJ also found that Dr.
20 Brenner's opinion was inconsistent with her examination findings. *Id.* The Court will address

21 ³ The ALJ also cited Plaintiff's gap in treatment as a reason to discount the disputed medical
22 opinions and Plaintiff's testimony, and the Commissioner concedes that there is no such gap.
23 (Dkt. #13 at 7.) This error is harmless, however, in light of the ALJ's other independent reasons
to discount the opinions and Plaintiff's testimony. *See, e.g., Carmickle v. Comm'r of Social Sec.*
Admin., 533 F.3d 1155, 1162-63 (9th Cir. 2008).

1 the sufficiency of each of the ALJ's reasons in turn.

2 1. *Legal standards*

3 As a matter of law, more weight is given to a treating physician's opinion than to that of a
4 non-treating physician because a treating physician "is employed to cure and has a greater
5 opportunity to know and observe the patient as an individual." *Magallanes*, 881 F.2d at 751; *see*
6 *also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). A treating physician's opinion, however,
7 is not necessarily conclusive as to either a physical condition or the ultimate issue of disability,
8 and can be rejected, whether or not that opinion is contradicted. *Magallanes*, 881 F.2d at 751. If
9 an ALJ rejects the opinion of a treating or examining physician, the ALJ must give clear and
10 convincing reasons for doing so if the opinion is not contradicted by other evidence, and specific
11 and legitimate reasons if it is. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1988). "This can
12 be done by setting out a detailed and thorough summary of the facts and conflicting clinical
13 evidence, stating his interpretation thereof, and making findings." *Id.* (citing *Magallanes*, 881
14 F.2d at 751). The ALJ must do more than merely state his/her conclusions. "He must set forth
15 his own interpretations and explain why they, rather than the doctors', are correct." *Id.* (citing
16 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)). Such conclusions must at all times be
17 supported by substantial evidence. *Reddick*, 157 F.3d at 725.

18 Absent affirmative evidence showing that the claimant is malingering, the ALJ must
19 provide "clear and convincing" reasons for rejecting the claimant's testimony. *Burrell v. Colvin*,
20 775 F.3d 1133, 1136-37 (9th Cir. 2014) (citing *Molina*, 674 F.3d at 1112). *See also Lingenfelter*
21 *v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). When evaluating a claimant's subjective
22 symptom testimony, the ALJ must specifically identify what testimony is not credible and what
23 evidence undermines the claimant's complaints; general findings are insufficient. *Smolen v.*

1 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996); *Reddick*, 157 F.3d at 722.

2 2. *Improvement with treatment, situational stressors, and exaggeration*

3 The ALJ discounted Plaintiff's testimony, Dr. Sigafus's December 2017 checkbox form
4 opinion (AR at 1577-81), and Dr. Brenner's March and October 2017 opinions (AR at 1370-73,
5 1582-88) as inconsistent with Plaintiff's treatment record, which showed improvement with
6 treatment and exacerbations in the context of situational stressors (such as homelessness and
7 housing problems, and lack of disability benefits), rather than impairments. AR at 20-22. The
8 ALJ also found that the record showed that Plaintiff embellished his symptoms, "especially if he
9 thinks it will get him something." AR at 21, 22.

10 Substantial evidence in the record does show improvement with treatment. *See, e.g.*, AR
11 at 425 (describing improvement since the start of treatment), 1014 (describing improvement with
12 medication), 1233 (describing improvement of symptoms, and that recent start of psychotherapy
13 has been helpful), 1266 (treatment note indicating that Plaintiff's depression, anxiety, and post-
14 traumatic stress disorder symptoms were better now than in the past), 1486 (treatment note
15 describing improvement with medication, with better control of anger and less severe
16 depression).

17 The ALJ also found that the record indicates a link between exacerbation of symptoms
18 and non-impairment-related situations, and this finding is supported by substantial evidence.⁴
19 AR at 20-21. Plaintiff's involuntary inpatient psychiatric treatment, for example, was preceded

20 ⁴ The ALJ stressed that Plaintiff was focused on his lack of disability benefits and his housing
21 problems. AR at 20-22. Indeed, Plaintiff referenced these issues during nearly all of his
22 appointments. *See, e.g.*, AR at 431, 435, 441, 450, 487, 513, 521, 549, 576, 655, 667, 715, 724,
23 746, 750, 754, 758, 765, 773, 779, 783, 789, 835, 932, 934, 975, 1233, 1374, 1415, 1433, 1455,
1529. That focus does not necessarily undermine his allegations or his providers' opinions,
however. Even if this reasoning was erroneous, the ALJ cited other legally sufficient reasons to
discount that evidence, and therefore any error is harmless. *See Carmickle*, 533 F.3d at 1162-63.

1 by weeks of Plaintiff's refusal to take his prescribed medication, and urine testing revealed the
2 presence of marijuana and cocaine on the date of his admission, though he denied using either.
3 AR at 1450-51.

4 Likewise, there is evidence in the record that Plaintiff exaggerates in order to provoke a
5 response. *See, e.g.*, AR at 435 (Dr. Brenner's note that at the beginning of Plaintiff's treatment
6 "he reported intermittent thoughts about hurting self or others many times – all appeared
7 contingent on not getting what he wants[,] including SSI money"), 773 (during an appointment
8 after a fall, Plaintiff's provider describes him as "quite irritable" about being denied benefits and
9 saying "The state doesn't want to help me? They want me to be crazy? Well, I'll show them just
10 how crazy I can be!"), 1455 (during his inpatient psychiatric treatment, Plaintiff's "threats of
11 violence seem to be inflammatory, are presented with a lack of seriousness and seemingly a
12 desire to provoke a reaction in his care team").

13 These parts of the record undermine Plaintiff's allegations as well as the opinions written
14 by Plaintiff's providers, and are legally sufficient reasons to discount both Plaintiff's testimony
15 and his providers' opinions. *See Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017)
16 ("[E]vidence of medical treatment successfully relieving symptoms can undermine a claim of
17 disability."); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (finding it not improper
18 to reject an opinion presenting inconsistencies between the opinion and the medical record);
19 *Thomas*, 278 F.3d at 957 (stating that ALJ may consider improvement with treatment in
20 discounting physician's opinion); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001)
21 (holding that a credibility determination based on, among other things, a tendency to exaggerate,
22 was supported by substantial evidence); *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595,
23 599-600 (9th Cir. 1999) (contrary to plaintiff's claims of lack of improvement, physician

1 reported symptoms improved with use of medication, which supports ALJ's rejection of
2 plaintiff's testimony). Because this reasoning supports the ALJ's assessment of Plaintiff's
3 testimony as well as the opinions of Drs. Sigafus and Brenner, those portions of the ALJ's
4 decision are affirmed.

5 3. *Physical condition and activities*

6 The ALJ noted that Plaintiff was stabbed in October 2016, but found that he physically
7 "healed well," as evidenced by full strength in extremities on testing and Plaintiff's refusal to
8 engage in physical therapy for alleged abdominal pain. AR at 21. The ALJ noted that even since
9 the stabbing, Plaintiff walks everywhere he goes, including a half-mile uphill for appointments
10 and to and from the grocery store. *Id.* The ALJ concluded that Plaintiff did not have physical
11 limitations stemming from the stabbing. *Id.*

12 In disputing whether he "healed well," Plaintiff points to complications arising shortly
13 after the stabbing, but these complications resolved within months and thus did not satisfy the
14 twelve-month durational requirement. (Dkt. #10 at 7.) Plaintiff also alleges that he had trouble
15 walking due to chronic pain, yet he testified that he walked everywhere he went, including to his
16 medical appointments and the grocery store. AR at 105, 113-14, 1147, 1309. Moreover, despite
17 Plaintiff's arguments at the hearing and in his briefing, in his agency paperwork completed the
18 month after the stabbing, Plaintiff denied any physical limitations. *See* AR at 364. To the extent
19 that Plaintiff subsequently alleged physical limitations, the ALJ did not err in finding those
20 allegations to be inconsistent with the record.

21 4. *Inconsistent activities*

22 The ALJ discounted the opinions of Drs. Brenner and Sigafus in part because Plaintiff's
23 activities demonstrated he was more functional than these providers found him to be. AR at 22.

1 Plaintiff disputes this reasoning, citing treatment notes that he contends the ALJ ignored and
2 which show him to be less functional than the ALJ found. (Dkt. #10 at 11 (citing AR at 80, 91-
3 92, 1066, 1228, 1416).) Some of the citations mentioned by Plaintiff do describe exacerbations
4 of symptoms, but these flares occurred at a time that Plaintiff was not taking his medications
5 and/or using substances (AR at 1416, 1449), while others do not contradict the ALJ's findings
6 (AR at 1066, 1127-28).⁵ The ALJ did not err in relying on inconsistent activities in discounting
7 Plaintiff's subjective allegations.

8 5. *Inconsistent treatment notes*

9 As an additional reason to discount Dr. Brenner's March 2017 opinion, the ALJ cited her
10 contemporaneous mental status examination, which he found to be inconsistent with her
11 conclusions. AR at 22. For example, Dr. Brenner's examination notes describe Plaintiff's
12 attitude as pleasant and cooperative, and she indicated that he engaged well in conversation. She
13 also stated that Plaintiff's thought process and content, memory, and fund of knowledge were
14 within normal limits, with deficits in concentration sometimes. AR at 22. The ALJ reasonably
15 concluded that these findings are inconsistent with the marked and severe social and cognitive
16 limitations Dr. Brenner assessed. AR at 1371-73.

17 Plaintiff argues that Dr. Brenner's opinion was informed by her treating relationship,
18 rather than her contemporaneous examination. (Dkt. #10 at 13.) Plaintiff cites no portion of Dr.
19 Brenner's opinion that suggests this is the case; the form asks Dr. Brenner to indicate how long
20 her opined limitations would accurately describe Plaintiff, and she indicated she was unsure. AR

21 ⁵ Some of the records cited by Plaintiff were not before the ALJ. *See* AR at 80, 92-92. The
22 Appeals Council stated that it did not consider or exhibit this evidence. AR at 2. Although
23 Plaintiff cites this evidence as evidence that the ALJ "ignored," the ALJ could not have
considered this evidence because it was not in the record at the time of the ALJ's decision. (Dkt.
#10 at 11.)

1 at 1372. Thus, it is not clear how comprehensive Dr. Brenner intended her opinion to be. In any
2 event, the ALJ did not err in considering whether her opinion was consistent with her
3 contemporaneous notes, in the context of the entire record, and this is a legitimate reason to
4 discount the opinion. *See Bayliss*, 427 F.3d at 1216 (affirming an ALJ's rejection of a treating
5 doctor's opinion because it conflicted with his contemporaneous clinical notes, along with his
6 other recorded observations).

7 **V. CONCLUSION**

8 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
9 case is **DISMISSED** with prejudice.

10 DATED this 1st day of April, 2019.

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13 MICHELLE L. PETERSON
14 United States Magistrate Judge
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